

## REMARKS/ARGUMENTS

### 35 USC §102 (b)

Reconsideration and allowance are requested of Claim 1, which the Examiner has rejected under 35 USC §102(b) as being anticipated by Flory. MPEP § 706.02(b) states that a 35 USC § 102(b) rejection can be overcome by persuasively arguing that the claims are patentably distinguishable from the prior art reference, and/or by amending the claims to patentably distinguish over the prior art. Applicant contends that Claim 1 is patentably distinguishable from the Flory reference.

Invalidity for anticipation requires that all of the elements and limitations of the claim are found within a single prior art reference. Carella v. Starlight Archery and Pro Line Co., 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed.Cir.1986). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576 (C.A. Fed. 1991).

Applicant's claimed invention is patentably distinguishable from Flory for several reasons. First, Applicant's Claim 1 claims that "the mounting on the first shield is positioned substantially parallel to the mounting on the second shield . . . ." The substantially parallel relationship of the mountings in Applicant's claimed invention allows the nose piece to move from a first position to a second position without affecting the position of the shields on the patient's face. This is important when performing laser surgery on or near a patient's face so that laser radiation does not accidentally get under the shields and into the patient's eye. In contrast, the mountings

in Flory are not substantially parallel. As seen in Flory's FIG. 1, each mounting is angled inward (toward the nose of the user) at about a 30 degree angle, which cannot be considered substantially parallel. Therefore, Flory does not anticipate Applicant's claimed invention.

Further, Applicant's Claim 1 claims that "the nose piece can move from the first position to the second position without altering the position of the shields." In contrast, Flory does not disclose any movement of the nose piece because the device in Flory is for the unrelated art of swimming where users of the goggles do not want the nose piece to move during use. Even if Flory did disclose movement of its nose piece from a first position to a second position, which Applicant does not believe that it does, movement of the nose piece in Flory would result in movement of the shields because of the substantial inward angle of the mountings. An example of the shield movement that is likely to occur in Flory can be seen in Applicant's FIG. 19, labeled "Prior Art" wherein the shields move as the nose piece is moved. Therefore, Flory is patently distinguishable from Applicant's claimed invention because Applicant's claimed invention is aimed at preventing movement of the shields.

#### **Election/Restriction**

Applicant respectfully submits that for the reasons above, Claim 1 is allowable as a generic and linking claim, and therefore dependant Claims 2-10, 12, 14-33 should be considered and allowed at this time.

#### **Allowable Subject Matter**

The Examiner has indicated that Claims 11 and 13 are directed to allowable subject matter. Applicant has cancelled Claims 11 and 13 and rewritten them as new Claims 34 and 35. Claim 34 is written in independent form and includes all of the limitations of the base claim and all intervening claims. Allowance is respectfully requested of new Claims 34 and 35.

### Conclusion

It is respectfully submitted that this response places Applicant's application in condition for allowance, and therefore further and favorable action on this application is requested. If for any reason the Examiner has any questions about the new claims or the statements made in this response, Applicant's attorney respectfully requests the Examiner to contact Applicant's attorney by telephone to set up an interview. It is believed that such an interview will be helpful in placing the application in condition for allowance.

Respectfully submitted,

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